

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY**

Call to Order: By **CHAIRMAN JOHN HERTEL**, on January 26, 1999 at 9:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:
Executive Action: SB 27; SB 115; SB 129

{Tape : 1; Side : A; Approx. Time Counter : 0}

EXECUTIVE ACTION ON SB 27

Motion: SEN. MCCARTHY moved that SB 27 DO PASS AS AMENDED.

Discussion: First, **Bart Campbell** explained that the Committee had passed six amendments last Friday, 1-22-99 that were mainly "clean up the language" amendments. That is why the motion should be Do Pass As Amended. The amendments that are to be

looked at today are separate and each should be taken separately. By Thursday, he should have all amendments that the Committee has adopted edited into one amendment for the bill.

Motion: SEN. MCCARTHY moved that amended SB 27 BE AMENDED with the amendment listed as #4 in EXHIBIT (bus20a01).

Discussion: Bart Campbell explained that #4 was submitted by the Department of Justice. To summarize, right now the provisions of this act is a violation of 30-14-103 which is a consumer protection provision. This says that in addition to that, it is a violation and there will be a new section 14 which the Committee will get to later and the Montana Unfair Trade Practices Protection Act. It is making "wider" what you are violating if you violate a provision of this act.

SEN. MCCARTHY asked Mr. Campbell to explain the penalties on page 14. Mr. Campbell said that this will be an addition to Section 14. It is inserted as Section 14 but would then become Section 15. Section 30-14-142 is what the penalties are if you violate 30-14-103, the general consumer protection. This is adding some specific penalties for a violation of the Montana Telemarketing Registration and Fraud Prevention Act which is what this new bill is. The Department of Justice is looking for some other penalties in addition to the ones that are already in law. Most are civil penalties with the exception of Subsection 3.

Vote: Motion carried 6-0.

No motion was made on amendment #12. Discussion was held on amendment #12 which was submitted by the Direct Marketing Association. This amendment #12 was labeled "A" and "B" so the committee could look at each separately. SENATOR DEBBIE SHEA was asked to speak to the bill and this amendment because she was on the interim committee that put this bill together.

SEN. SHEA gave some background. Two years ago she put in a draft request for telemarketing registration and fraud prevention. In the 1997 Legislative Session there was a bill addressing this problem. The bill did not truly address the issue and offer the safety measures. Therefore that is why the interim committee was established. This bill addresses registering with the State, posting a bond, consumer awareness program and provides criminal and civil penalties. The number #12 amendment takes out what we as the interim committee specifically wanted in the bill. If the telemarketer tapes the conversation, he can take it to the bank. If the telemarketer is legitimate that is good, but they were not worried about that kind of telemarketer. A fraudulent

telemarketer could bring the tape in and once they have access to the consumer's account they can do all kinds of mischief.

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Mr. Campbell made some statements concerning amendment #6. There is a technical problem with this. This is adding a subsection that really says that a telemarketer can't accept payment for goods or services by credit card or pre-authorized check if there has been an offer of a premium or a gift as an inducement to the purchase of the goods or service. If the Committee accepts this, the Committee must go back through this bill and change it a lot. This bill has specific language in it that you may offer a prize, etc. as a telemarketer but there are disclosure requirements in this bill.

Amendments #12-A; #12-B; #2; #6 and #17 all died for lack of a motion by a Senator on the Business and Industry Committee.

Motion: SEN. SPRAGUE moved that amended SB 27 BE AMENDED with the amendment listed as #16 in EXHIBIT (1).

Discussion: This amendment was a request from the MT Broadcasters Assoc. **Mr. Campbell** explained that on page 6, line 19 it says that a person soliciting the sale of services provided by a satellite or cable television system or radio or television stations authorized by the federal government. . .There seems to be no problem adding "or radio or television stations". He did not know what sale of services a radio or television station solicit when they broadcast over the airwaves and maybe this doesn't really hurt anything. **SEN. SPRAGUE** felt that this wasn't a really important amendment, but radio can get fairly creative and maybe there should not be a loophole left for someone to get through. Also, the elderly are probably not on as much cable as just the local television stations.

Vote: Motion carried 6-1 with SEN. MCCARTHY voting no.

{Tape : 1; Side : A; Approx. Time Counter : 20.9}

Motion: SEN. MCCARTHY moved that amended SB 27 DO PASS AS AMENDED.

Discussion: SENATOR FRED THOMAS brought the subject of the bonding of telemarketers to the floor. He wanted to know if this had been addressed by anyone. It was his opinion that no bond would be available to a telemarketer under the provisions of this bill. He felt that there should be some modification concerning

this bonding issue. The section that is being looked at is on page 4, starting at line 19.

SEN. JOHN HERTEL announced that a person was in attendance who is an expert in the bonding field. He offered to let committee members ask questions if they so desired.

Bob Durand, State Auditor's Office. He has been in this business for 24 years and has underwritten a variety of surety requests. The request that is in the law with a three year tail could make that bond somewhat difficult to consider because you are looking at a three year obligation versus a one year obligation. There is rule making authority for developing the bond language to make the bond acceptable to the surety industry with their input. With any kind of surety, the bonding company will look at the three "C's" of bonding which are: Cash, Capacity (experience) and Character. Those are the three items that will be underwritten by an underwriter.

SEN. MCCARTHY asked if **Mr. Durand** felt the bond section was enforceable or feasible. **Mr. Durand** felt that some of the terms make it difficult for a surety to openly write this kind of a bond. He would also be happy to work with anyone to make this section better.

SEN. HERTEL stated that there seemed to be some difficulties in getting this established. He asked if the amount of \$50,000 is part of the problem. **Mr. Durand** replied that the higher the bond penalty, the more the underwriting will have to be done. They would be exposing themselves to \$50,000. Some states have \$100,000. Others are less than that. The higher the penalty, the less possibility of a bond being issued.

SEN. DAVE BERRY asked what kind of cost is it for a bond. **Mr. Durand** stated that the way it is written currently in the bill, it would seem that the premium on this could go to \$40 or \$50 per thousand. This being because it is a three year obligation. By tweaking the law to make the bond more compliant to the codes, and eliminating the direct right of action of third parties then it would become easier to underwrite and make the fees possibly as low as \$10 per thousand. The input from the surety industry would be very helpful to see what would be acceptable to an underwriting practice.

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SEN. SPRAGUE asked about the three year discovery period. **Mr. Durand** replied that if a surety company were to have any kind of

loss on a bond, most generally the loss would be in the first year. Then to open it up for another discovery period of two more years, this demands that the surety company have reserves for potential losses and would expand the cost. He went on to reiterate that a high bond of \$100,000 would make it more difficult to get a bond than if the three years were pulled back to two years. One year is a standard discovery period.

One other problem with the bill is the direct right of action by third parties. This is on page 4, line 20. The language reads "The bond must provide for the indemnification of any person suffering a loss as the result of violation of (sections 1 through 13)." That type of language would demand that the surety company handle all of the potential claims. If they are charging \$10 per thousand, they do not collect enough premium to be looking at any claims situation. The Department of Commerce or the Justice Department should be the department that handles the complaints. And when the fraud is determined by the department, then they could send the surety company a letter and say "pay". If we get it to the point where it indemnifies the State of Montana, it makes the bond significantly easier to write.

SEN. MCCARTHY asked **Mr. Campbell** if this issue was ever discussed in the interim committee. **Mr. Campbell's** recollection was more to the general difficulty in securing a bond and Mr. Canon spoke to that difficulty. That was all. The change that is being discussed here could be for the better possibly.

SEN. THOMAS asked **Mr. Bill Olson, AARP** if the amount of \$50,000 were to be changed to \$25,000, would that be acceptable or not. **Mr. Olson** said that it might be alright. But there are two factors that should be weighed. One is the amount of the bond and the second one is the term of that bond. One state, Texas, has an amount of \$10,000. Arizona has \$100,000. There was an individual that was scammed in Arizona for \$3400 and two years later, because of the existence of a bond, they recovered \$2200.

SEN. THOMAS then asked about the three years discovery. He asked if one year would be acceptable. **Mr. Olson** said that one or two might be acceptable. **SEN. THOMAS** then asked about the indemnification of the State of Montana for a person suffering a loss instead of just any person suffering a loss. **Mr. Olson** said that was acceptable.

Mr. Campbell asked the committee to look at page 5, line 10. The aggregate liability of the surety company to all persons injured", would **SEN. THOMAS** like to change it there also to include "the State of Montana". He said yes.

Motion/Vote: SEN. THOMAS moved that SB 27 BE AMENDED. Motion carried unanimously. 7-0 (page 4, line 20 following indemnification, and add "to the State of Montana for" and strike "of" and also on page 5, line 10 "the aggregate liability of the surety company to the State of Montana for all persons . . ."

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Motion/Vote: SEN. THOMAS moved that SB 27 BE AMENDED. Motion carried 6-1 with SEN. COCCHIARELLA voting no. (page 4, line 26; change 3 years to one year and on page 5, line 1; change 3 years to one year)

Vote: Motion carried unanimously. This is the vote on the original motion on SB 27 DPAA by SEN. MCCARTHY. 7-0

The amendments were finalized and handed in by Mr. Bart Campbell and will become EXHIBIT (bus20a02).

{Tape : 1; Side : B; Approx. Time Counter : 1.3}

EXECUTIVE ACTION ON SB 115

Motion: SEN. THOMAS moved that SB 115 DO PASS.

Discussion: SEN. THOMAS offered amendments EXHIBIT (bus20a03). He also handed out an exhibit explaining SB 115 EXHIBIT (bus20a04).

Motion: SEN. THOMAS moved that SB 115 BE AMENDED.

Discussion: SEN. THOMAS explained how the bill works using the figures 2 to 50. He explained the figure of "five" in "groups of five or more" as the floor in the bill. He then explained the meaning of participation requirements in the equations put forth by the insurance companies.

SEN. MIKE SPRAGUE asked what is the provision for participation requirement. SEN. THOMAS said that figure is up to the insurance companies. It could be negotiable, but unlikely. Usually for small groups it is 80% to 100% participation.

SEN. THOMAS explained that the purpose of the bill is counting those people in the participation requirements who work at a company and are insured under their spouse's coverage. The question then arises at how low is the committee willing to go in allowing smaller companies to use these participation figures.

SEN. MCCARTHY feels that it is the smaller companies with two to four employees that need the protection of this bill.

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SEN. MCCARTHY asked if this bill was creating a sick people pool.

Ms. Claudia Clifford, State Auditor's Office said that most people opt in and out of insurance groups for economic reasons. They are looking for better coverage at a better cost if at all possible.

SEN. SPRAGUE asked how a medical savings plan would effect groups. **Ms. Clifford** said that a person could have a medical savings plan on top of insurance to pay for the deductible, etc. Most small groups have very high deductibles.

SEN. VICKI COCCHIARELLA was concerned about the number "five" of the amendment. By adopting the number "five" in these amendments, how many small employers are not going to be able to have the small group coverage? **Ms. Clifford** could not quantify the answer, but Riley Johnson testified that most of his members are groups of two, three or four. The higher the number is set, the harder the chance to get group coverage is for the small companies.

Substitute Motion: **SEN. SPRAGUE** made a substitute motion SB 115 changing: 2. Page 3, line 10 of the amendments and have it read: "of groups of four or more".

Discussion: **SEN. THOMAS** encouraged the committee to not make this change. It would be good to be able to grant insurance to everyone, but that is not feasible. It is a good bill. But if the number is set so low, you have negated the bill and have gone too far. **SEN. SPRAGUE** respects the previous comments, but feels that four is an average number that falls between two and five. **SEN. BERRY** asked if the groups get down to three or less, are the premiums going to be out of sight? **SEN. THOMAS** replied that in the area that is being dealt with, the small group guaranteed issue program, if the figure goes too low, premiums will be driven upward.

Vote: Motion carried 4-3 with **SEN. HERTEL, SEN. THOMAS AND SEN. BERRY** voting no. (This was a roll call vote.)

Motion/Vote: **SEN. SPRAGUE** moved that SB 115 DO PASS AS AMENDED. Motion carried unanimously. 7-0

EXECUTIVE ACTION ON SB 129

Motion/Vote: SEN. SPRAGUE moved that SB 129 BE TABLED. Motion carried unanimously. 7-0

ADJOURNMENT

Adjournment: 10:25 A.M.

SEN. JOHN HERTEL, Chairman

MARY GAY WELLS, Secretary

JH/MGW

EXHIBIT (bus20aad)